

## **TITLE 14. BOARD OF FORESTRY AND FIRE PROTECTION**

### **NOTICE OF PROPOSED RULEMAKING**

#### **Watershed Protection Extension, 2002**

The Board of Forestry and Fire Protection (Board) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

#### **PROPOSED REGULATORY ACTION**

The Board proposes to amend the following sections of Title 14 of the California Code of Regulations (14 CCR):

§ 895.1	Definitions
§ 898(a)	Feasibility Alternatives
§§ 914.8 [934.8, 954.8](g)	Tractor Road Watercourse Crossing
§§ 916 [936, 956](e)	Intent of Watercourse and Lake Protection
§§ 916.2 [936.2, 956.2](d)	Protection of the beneficial Uses of Water and Riparian Functions
§§ 916.9 [936.9, 956.9](y)	Protection and Restoration in Watersheds with Threatened or Impaired Values
§§ 916.11 [936.11, 956.11](b)	Effectiveness and Implementation
	Monitoring
§§ 916.12 [936.12, 956.12](f)	Section 303(d) Listed Watersheds
§§ 923.3 [943.3, 963.3](h)	Watercourse Crossings
§§ 923.9 [943.9, 963.9](g)	Roads and Landings in Watersheds with Threatened or Impaired Values

#### **PUBLIC HEARING**

The Board will hold a public hearing starting at 9:00 A.M., on Thursday, May 9, 2002, at the Radisson Hotel and Conference Center, 2233 Ventura Street, Fresno, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

#### **WRITTEN COMMENT PERIOD**

**Comments need to identify the rule of concern by title shown at the top of the Notice of Publication to assure your comments are included in the correct rule file.**

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M., on Monday, May 6, 2002. The Board will consider only written comments received at the Board office by that time (in addition to those comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection  
Attn: James L. Mote  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection  
Room 1506-14  
1416 9<sup>th</sup> Street  
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

[board.public.comments@fire.ca.gov](mailto:board.public.comments@fire.ca.gov)

## **AUTHORITY AND REFERENCE**

Public Resources Code (PRC) § 4551 authorizes the Board to adopt such Rules and regulations as it determines are reasonably necessary to enable it to implement, interpret, or make specific sections 4513, 4514.3, 4551.5, 4551.7, 4552, 4553, 4562.5, 4562.7, 4562.9, 4582, and 4584 of the Public Resources Code.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Z'berg-Nejedly Forest Practice Act of 1973 (ref. Division 4, Chapter 8 of the Public Resources Code) established the Legislature's concern throughout the State relating to the use, restoration, and protection of the forest resources. The Legislature further

recognized that these forest resources provide watershed protection and fisheries maintenance. The Legislature declared that it is the policy of the State to encourage responsible forest management that considers the public's need for watershed protection and fisheries (ref. PRC § 4512). Furthermore, the Legislature stated its intent to create and maintain an effective and complete system of regulation for all timberlands. This system is to assure the productivity of timberlands and the goal of maximum sustained production of high quality timber products. It is also intended to give consideration to values related to watershed, wildlife, and fisheries (ref. PRC § 4513). Public Resources Code § 4551 gives the Board the authority to adopt such rules and regulations which will enable it to carry out its responsibilities to protect fish and water resources, including but not limited to streams, lakes, and estuaries.

In 1996, the State Fish and Game Commission listed Coho salmon south of San Francisco Bay as threatened under the State Endangered Species Act (ESA). Then in 1997, the National Marine Fisheries Service (NMFS) listed Coho salmon as threatened throughout its range in California under the Federal ESA. Steelhead trout was listed by NMFS as a threatened species in the Northern California ESU on June 7, 2000. In April 2001 the State Fish and Game Commission accepted a petition to list Coho salmon as endangered north of San Francisco Bay. In May of 2001 the Fish and Game Commission adopted an emergency regulation which established the Coho salmon as a threatened species. The Commission also adopted these proposed regulations of the Board as the minimum protection to be provided to the species for the effects of timber harvesting.

Among many other sources of information considered by the Board in preparing the proposal for rule changes, a comprehensive review of the California Forest Practice Rules (FPRs), with regard to their adequacy for the protection of salmonid species, has been prepared for the Board (*Report of the Scientific Review Panel* [SRP report], 1999). Following an extensive review of the regulations, "The SRP concluded the FPRs, including their implementation (the 'THP process') does not ensure protection of anadromous salmonid populations" (*Report of the Scientific Review Panel*, 1999). Although this report was specific to the North Coast region, the Board believes that many of the recommendations made in the report could be effectively applied throughout the State to ensure the protection of the beneficial uses of water, including fisheries and other aquatic habitat.

The Board of Forestry and Fire Protection recognized the substantial concerns raised by other agencies additionally charged with the protection of the State's valuable watershed resources. The Board is also extremely aware of the need to protect listed species that may be impacted by practices that are regulated under the Board's purview, regardless of their location within the State. Furthermore, the Board recognized the potential for economic impacts to timberland owners and others that could be imposed from certain types of restrictions or requirements. Considering these factors, the Board adopted changes to the Forest Practice Rules under a previous rulemaking package (*Protection for Threatened and Impaired Watersheds*, 2000).

It should be noted that pursuant to PRC §§ 4512, 4513, 4551, 4551.5, 4552, and 4553; the Board is moving forward with action to further analyze the effectiveness of the rules to protect listed species and the beneficial uses of water. In order to clarify the Board's intent to address the protection of listed aquatic species and watercourses listed as impaired (pursuant to section 303(d) of the Clean Water Act) on a watershed basis, the Board chose to establish a specific period of time that the rule changes adopted July 1, 2000, would be effective. By imposing a limit on the effective period of the rule changes, the Board would be allowed to work with landowners, scientists and other parties during the balance of the year 2000 to investigate whether an alternative regulatory approach could be developed. The Board established a group (Ad Hoc Watershed Committee) to research whether an alternative approach can be developed that would use enhanced scientific analysis and the principals of watershed analysis to determine, among other things, the potential cumulative environmental impacts of proposed timber harvesting operations and associated activities. The Board hopes that an accumulation of knowledge applicable to specific watersheds and basins will be brought together by the various agencies and the public.

This knowledge could then be used to tailor site-specific forest practices to avoid any significant environmental impacts from individual timber harvesting plans, or cumulative impacts from various activities in a watershed that could combine with the effects of timber harvesting. The Board recognized that any alternative approach would not be fully implemented prior to December 31, 2000 and extended the rule for one year in a previous rulemaking package (*Protection for Threatened and Impaired Watersheds, 2001*). The Board last year extended that rule package for an additional year with changes that resulted from field testing the rule package for the previous one and one half years (*Protection for Threatened and Impaired Watersheds, 2002*).

The Board has continued to gather additional information on improving the means of regulating timber operations at the watershed level. This included an April, 2001 watershed workshop at Blodgett Experimental Forest. The Board has also received several presentations on the effects of timber harvesting on various watersheds, including Deer Creek in Shasta Co. and Redwood Creek in Humboldt County. The Board has also considered public testimony on the problems with implementation of the 2000 rules. Some modifications were made to those rules in 2001 and changes are effective in 2002.

An alternative to these rules was proposed last year to provide performance based rather than prescriptive rule but it was denied by OAL as it needed more work. This rulemaking action proposes to extend the effective date of the changes to December 31, 2003. It further is submitting the revised performance based package (Interim Watershed Mitigation Addendum -2001) to test against these rules. This will provide the Board adequate time to evaluate and implement alternatives to those rules that became effective July 1, 2000. The Board *Ad Hoc* Watershed Committee is continuing to accumulate knowledge from the evaluation and research efforts of other agencies and institutions.

. The *Ad Hoc* Watershed Committee will continue the accumulation of knowledge during the upcoming year. The Committee will continue refining application of the best science

available to select the appropriate tools to address watershed evaluation or assessment. This is consistent with the Board mandate under Section 4553 of the Public Resources Code. If further work is still necessary, any identified improvements that can be made will be proposed in the upcoming year. The complexity of this regulatory effort is not only in the science of watershed evaluation and assessment but in the “art” of translating that science into regulatory language. Regardless, the Board is continuing to put forward regulations for the protection of salmonid species and the beneficial uses of water which are based on the best science and protective practices available.

#### **14 CCR § 895.1**

#### **Definitions**

In order to clarify the Board's commitment and intent to move forward with further actions intended to address protection of listed aquatic species and watersheds defined as impaired by the Board on a watershed basis, while also considering those waterbodies listed as impaired pursuant to section 303(d) of the Clean Water Act; the Board proposes to extend the specific period of time that the rule changes that became effective July 1, 2000, would be effective. This change is presented under subsection (1). The Board proposes to extend the effective period of the changes to December 31, 2003.

#### **14 CCR § 898(a)**

#### **Feasibility Alternatives**

In order to clarify the Board's commitment and intent to move forward with further actions intended to address protection of listed aquatic species and watersheds defined as impaired by the Board on a watershed basis, while also considering those waterbodies listed as impaired pursuant to section 303(d) of the Clean Water Act; the Board proposes to extend the specific period of time that the rule changes that became effective July 1, 2000, would be effective. This change is presented under subsection (a). The Board proposes to extend the effective period of the changes to December 31, 2003.

#### **14 CCR §§ 914.8 [934.8, 954.8](g)**

#### **Tractor Road Watercourse Crossing**

In order to clarify the Board's commitment and intent to move forward with further actions intended to address protection of listed aquatic species and watersheds defined as impaired by the Board on a watershed basis, while also considering those waterbodies listed as impaired pursuant to section 303(d) of the Clean Water Act; the Board proposes to extend the specific period of time that the rule changes that became effective July 1, 2000, would be effective. This change is presented under subsection (g). The Board proposes to extend the effective period of the changes to December 31, 2003.

#### **14 CCR §§ 916 [936, 956](e)**

#### **Intent of Watercourse and Lake Protection**

In order to clarify the Board's commitment and intent to move forward with further actions intended to address protection of listed aquatic species and watersheds defined as impaired by the Board on a watershed basis, while also considering those waterbodies listed as impaired pursuant to section 303(d) of the Clean Water Act; the Board proposes

to extend the specific period of time that the rule changes that became effective July 1, 2000, would be effective. This change is presented under subsection (e). The Board proposes to extend the effective period of the changes to December 31, 2003.

**14 CCR §§ 916.2 [936.2, 956.2](d)**

**Protection of the Beneficial Uses of Water  
and Riparian Functions**

In order to clarify the Board's commitment and intent to move forward with further actions intended to address protection of listed aquatic species and watersheds defined as impaired by the Board on a watershed basis, while also considering those waterbodies listed as impaired pursuant to section 303(d) of the Clean Water Act; the Board proposes to extend the specific period of time that the rule changes that became effective July 1, 2000, would be effective. This change is presented under subsection (d). The Board proposes to extend the effective period of the changes to December 31, 2003.

**14 CCR §§ 916.9 [936.9, 956.9](y)**

**Protection and Restoration in Watersheds  
with Threatened or Impaired Values**

In order to clarify the Board's commitment and intent to move forward with further actions intended to address protection of listed aquatic species and watersheds defined as impaired by the Board on a watershed basis, while also considering those waterbodies listed as impaired pursuant to section 303(d) of the Clean Water Act; the Board proposes to extend the specific period of time that the rule changes that became effective July 1, 2000, would be effective. This change is presented under subsection (y). The Board proposes to extend the effective period of the changes to December 31, 2003.

**14 CCR §§ 916.11 [936.11, 956.11](b)**

**Effectiveness and Implementation  
Monitoring**

In order to clarify the Board's commitment and intent to move forward with further actions intended to address protection of listed aquatic species and watersheds defined as impaired by the Board on a watershed basis, while also considering those waterbodies listed as impaired pursuant to section 303(d) of the Clean Water Act; the Board proposes to extend the specific period of time that the rule changes that became effective July 1, 2000, would be effective. This change is presented under subsection (b). The Board proposes to extend the effective period of the changes to December 31, 2003.

**14 CCR §§ 916.12 [936.12, 956.12](f)**

**Section 303(d) Listed Watersheds**

In order to clarify the Board's commitment and intent to move forward with further actions intended to address protection of listed aquatic species and watersheds defined as impaired by the Board on a watershed basis, while also considering those waterbodies listed as impaired pursuant to section 303(d) of the Clean Water Act; the Board proposes to extend the specific period of time that the rule changes that became effective July 1, 2000, would be effective. This change is presented under subsection (f). The Board proposes to extend the effective period of the changes to December 31, 2003.

**14 CCR §§ 923.3 [943.3, 963.3](h)****Watercourse Crossings**

In order to clarify the Board's commitment and intent to move forward with further actions intended to address protection of listed aquatic species and watersheds defined as impaired by the Board on a watershed basis, while also considering those waterbodies listed as impaired pursuant to section 303(d) of the Clean Water Act; the Board proposes to extend the specific period of time that the rule changes that became effective July 1, 2000, would be effective. This change is presented under subsection (h). The Board proposes to extend the effective period of the changes to December 31, 2003.

**14 CCR §§ 923.9 [943.9, 963.9](g)****Roads and Landings in Watersheds with Threatened or Impaired Values**

In order to clarify the Board's commitment and intent to move forward with further actions intended to address protection of listed aquatic species and watersheds defined as impaired by the Board on a watershed basis, while also considering those waterbodies listed as impaired pursuant to section 303(d) of the Clean Water Act; the Board proposes to extend the specific period of time that the rule changes that became effective July 1, 2000, would be effective. This change is presented under subsection (g). The Board proposes to extend the effective period of the changes to December 31, 2003.

**SPECIFIC PURPOSE OF THE REGULATION**

The Z'berg-Nejedly Forest Practice Act of 1973 (ref. Division 4, Chapter 8 of the Public Resources Code) established the Legislature's concern throughout the State relating to the use, restoration, and protection of the forest resources. The Legislature further recognized that these forest resources provide watershed protection and fisheries maintenance. The Legislature declared that it is the policy of the State to encourage responsible forest management that considers the public's need for watershed protection and fisheries (ref. PRC § 4512). Furthermore, the Legislature stated its intent to create and maintain an effective and complete system of regulation for all timberlands. This system is to assure the productivity of timberlands and the goal of maximum sustained production of high quality timber products. It is also intended to give consideration to values related to watershed, wildlife, and fisheries (ref. PRC § 4513). Public Resources Code § 4551 gives the Board the authority to adopt such rules and regulations which will enable it to carry out its responsibilities to protect fish and water resources, including but not limited to streams, lakes, and estuaries.

Although the SRP report was specific to the North Coast region, the Board believes that many of the recommendations made in the report could be effectively applied throughout the State to ensure the protection of the beneficial uses of water, including fisheries and other aquatic habitat.

**DISCLOSURES REGARDING THE PROPOSED ACTION**

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None
- Costs or savings to any State agency: None
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500: None
- Other non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in federal funding to the State: None
- Significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states: The rule proposal will affect businesses and small business related to the timber industry by extending the effective period of rule changes that increase the cost for timber harvesting. These extra costs are associated with planning, operations, and monitoring, and may include but are not limited to: additional planning, construction and maintenance costs for roads and watercourse crossings, additional cost of professional consultations, and costs associated with a reduction in long term sustained yield (LTSY). There may also be additional cost associated with additional inspections.

Although the Board staff has identified the potential for increased costs associated with the previous changes to the Rules, which would be extended under this rule proposal, the Board staff also identified the potential for increased benefits to other sectors of business in the State. Some of the benefits derived from the change in the Rules could be contributed to both market and non-market values related to increases in anadromous fish populations, reduction in the costs of flood control, and the ability of land managers to continue to harvest timber without the restrictions that could result from a determination of "take" by the National Marine Fisheries Service. Benefits will also be derived from potentially enhanced beneficial uses of water for drinking and other recreational uses besides those related to sport fishing. The Board has made an initial determination that there will be no significant statewide adverse economic impact directly effecting business, including the ability of California businesses to compete with businesses in other states.

(Note: cost and benefit estimates for the individual Rules, which will be effectively extended for a period of one (1) year, are presented in the Initial Statement of Reasons.)

- Potential cost impacts on representative private persons or businesses: As indicated above, the rule proposal will affect businesses, and large and small landowners with an interest in the timber products industry by extending the effective date of rule changes that increase the cost for timber harvesting. These extra costs are associated with planning, operations, and monitoring, and may include but are not limited to: additional planning, construction and maintenance costs for roads and watercourse crossings, additional cost of professional consultations, and costs associated with a reduction in long term sustained yield (LTSY).



The Board staff anticipates that offsetting benefits will be derived from increases in recreation and commercial fishing, as well as reductions in the costs of flood control in some areas.

(Note: cost and benefit estimates for the individual Rules are similar to those referenced above and are presented in the *Initial Statement of Reasons*.)

- Significant effect on housing costs: None
- Adoption of these regulations may create or eliminate jobs within California. It is estimated that the reduction in long-term sustained yield resulting from the reduction in timber available for harvest could result in the loss of some 4,800 jobs over the long term. However, the increase in fish populations and enhanced recreational values that could result from the increased protection measures over the long term could result in the creation of jobs in the fishing industry and related industries over the long-term, offsetting the loss of jobs in other sectors of the economy. It should be noted that the changes proposed under this rulemaking action would only allow the rules to be effective for a period of one (1) year. Therefore, it is unlikely that the effects estimated to occur over the long-term would be realized.

Adoption of the extension of these regulations will not create new nor eliminate existing businesses within California. The rule only extends the date of the previously approved rule change.

Adoption of the extension of these regulations may cause the expansion of businesses currently doing business in the state of California. Increased fish populations and recreation values, which may result from adoption of this rule extension, could expand the businesses in the fishing, recreation, and related industries.

#### **EFFECT ON SMALL BUSINESSES:**

The rule proposal will affect small business related to the timber industry by extending the effective period of rule changes that increase the cost for timber harvesting. These extra costs are associated with planning, operations, and monitoring, and may include but are not limited to: additional planning, construction and maintenance costs for roads and watercourse crossings, additional cost of professional consultations, and costs associated with a reduction in long term sustained yield (LTSY). There may also be additional cost associated with additional inspections.

Although the Board staff has identified the potential for increased costs associated with the previous changes to the Rules, which would be extended under this rule proposal, the Board staff also identified the potential for increased benefits to other small business sectors in the State. Some of the benefits derived from the change in the Rules could be contributed to both market and non-market values related to increases in anadromous fish populations, reduction in the costs of flood control, and the ability of land managers to continue to harvest timber without the restrictions that could result from a determination of "take" by the National Marine Fisheries Service. Benefits will also be derived from potentially enhanced beneficial uses of water for drinking and other recreational uses besides those related to sport fishing. The Board has made an initial determination that

there will be no significant statewide adverse economic impact directly effecting small business, including the ability of California small businesses to compete with businesses in other states.

(Note: cost and benefit estimates for the individual Rules, which will be effectively extended for a period of one (1) year, are presented in the Initial Statement of Reasons.) The proposed rules do not conflict with, or duplicate Federal regulations.

## **BUSINESS REPORTING REQUIREMENT**

The regulation does not require a report, which shall apply to businesses.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code § 11346.5(a) (13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Board has determined that the proposed regulations may impact businesses. However, the Board has not identified any equally effective alternatives that would lessen any adverse impact on businesses at this time. The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing, or during the written comment period. Submissions may include the following considerations: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses, (ii) Consolidation or simplification of compliance and reporting requirements for businesses, (iii) The use of performance standards rather than prescriptive standards, or (iv) Exemption or partial exemption from regulatory requirements for businesses.

## **CONTACT PERSON**

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection  
Attn: James L. Mote  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460  
Telephone: (916) 653-9418 or,  
(916) 653-8007

The designated backup person in the event Mr. Mote is not available is Daniel Sendek, Executive Officer of the Board of Forestry and Fire Protection, at the above address and phone.

## **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

When the *Final Statement of Reasons* has been prepared the statement will be available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. All of the above referenced information is also available on the CDF web site at:

[http://www.fire.ca.gov/BOF/board/board\\_proposed\\_rule\\_packages.html](http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html)

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

